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4 Oakland, California 94612
5 Tel: (510) 350-8332
6 Fax: (510) 255-2600

7 Attorney for Plaintiff
8 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

11 THE REGENTS OF THE
12 UNIVERSITY OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 INDEMNITY INSURANCE
16 COMPANY OF NORTH AMERICA,
17 DOES 1 TO 20,

18 Defendants.

) Case No.: C 07 2721 PJH

) **DECLARATION OF MICHAEL P.**
) **O'BRESLY IN SUPPORT OF**
) **REGENTS' OPPOSITION TO**
) **INDEMNITY INSURANCE**
) **COMPANY'S MOTION TO**
) **TRANSFER VENUE**

) **Hearing Date: July 25, 2007**

) **Time: 9:00 a.m.**

) **Courtroom: 3**

) **Assigned to the Honorable Phyllis J.**
) **Hamilton**

19
20 I, Michael P. O'Bresly, declare:

21 1. I am a resident of the State of California and over the age of 18 years.

22 I am counsel of record for the plaintiff Regents of the University of California

23 herein. My business address is 1300 Clay Street, Oakland, California. I make the

1 statements herein of my own personal knowledge. If called upon to testify to the
2 following matters at trial, I could competently do so.

3 2. Attached hereto is a true copy of a letter dated October 20, 2006, from
4 Michael C. Phillips, counsel for Indemnity Insurance Company, to Norman C.
5 Hamill, an attorney in the Regents' Office of General Counsel. This letter was
6 forwarded to me for response in my role as counsel for the Regents.

7 3. Attached hereto is a true copy of an email which I sent to Mr. Phillips
8 on November 20, 2006.

9 I make the foregoing statements under penalty of perjury. Executed this 5th
10 day of July, 2007, in Oakland California.

11
12 DATED: July 5, 2007

/S/ Michael P. O'Bresly

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Michael P. O'Bresly

EXHIBIT A

Declaration of Michael P. O'Bresly on
Opposition to Motion to Transfer Venue
Regents of the University v. Indemnity Insurance Company



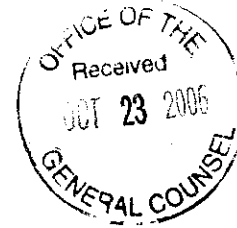
LOS ANGELES, CALIFORNIA
INLAND EMPIRE, CALIFORNIA

ANDERSON, MCPHARLIN & CONNERS LLP
LAWYERS
ESTABLISHED 1947

MICHAEL C. PHILLIPS APC
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www.amclaw.com

October 20, 2006



in reply please
refer to file no.
5494-127

Norman J. Hamill
University Counsel
Regents of the University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200

Re:

Claim No. : JY05J0063052
Insured : Regents of University of California
Policy No. : CTFI 20515296
Carrier : Indemnity Insurance Company of North America
Date/Loss : 12/28/04 - 1/10/05
Claim : So. Radial & CA Ave., UC Irvine/rain event

Dear Mr. Hamill:

As you are aware, this office represents Indemnity Insurance Company of North America (Indemnity) concerning the above claim submitted by the Regents of the University of California (UC Regents) for damage suffered at a construction site located at South Radial and California Avenue on the campus of UC Irvine. Due to heavy rains and flooding, the partially completed roadways suffered erosion damage.

On or about April 27, 2005, the UC Regents submitted a claim for the damage suffered because of the heavy rains through AON Risk Services, Inc. (AON) who reported the claim to Indemnity. Upon receipt of the claim, Indemnity hired GMA Insurance Adjusters, Inc. and Mr. Richard Henderson to assist in the investigation of the loss. Upon completion of the investigation of the cause of loss, Indemnity concluded the claim as submitted would not be covered under the above Policy. On August 18, 2005, Indemnity, through Mr. John Adair, denied the claim.

On November 14, 2005, Ms. Helen Kong of AON wrote to Mr. Adair of the Ace Westchester Specialty Group disputing the denial of the claim and asking Indemnity to reconsider its denial.

ANDERSON, MCPHARLIN & CONNERS LLP
LAWYERS

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October 20, 2006
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On February 14, 2006, after reviewing the points raised by Ms. Kong, a letter was sent from this office advising Ms. Kong that Indemnity had reviewed her points but still felt the denial of the claim was appropriate.

On March 8, 2006, you sent a letter on behalf of the UC Regents asking Indemnity to reconsider its denial of the claim. In your March 8, letter you also raised an argument that the efficient proximate cause of the damage suffered at this project was not flooding and/or excessive rain water, but water percolating below the surface into the subsurface roadway base.

On April 17, 2006, I sent an e-mail to you which was followed up on April 19, 2006 by correspondence requesting that you provide any and all facts that support your contention that the efficient proximate cause of the loss and the mechanism of the loss was the percolation of the water into the subsurface and/or subgrade.

On April 20, 2006, you responded stating as follows:

"... It is my understanding that the University has provided your client with all of the documentation necessary to support the payment of this claim. . . ."

[For the record, it is my understanding, prior to the denial, no loss documentation was submitted concerning damages, nor has any been submitted.]

Following your April 20, 2006, letter, I advised Indemnity would review your contention that the cause of this loss was something other than heavy rainfall and flood. As part of that review, Indemnity, through GMA Insurance Adjusters, Inc., hired AMEC Earth and Environmental, Inc. (AMEC) (Geotech consultants) to review the loss and provide their opinion as to the cause of this loss. AMEC is still investigating the loss and has indicated they would like to review the following:

1. The project Erosion Control Plans;
2. The project Grading Plans;
3. The preliminary and as-build geotechnical reports and daily field reports;

and

ANDERSON, MCPHARLIN & CONNERS LLP
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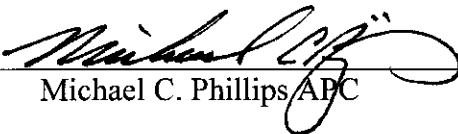
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4. The engineering line and grade certifications.

It is assumed having AMEC review this material will not be a problem. GMA Insurance Adjusters, Inc. will contact the appropriate parties to try and obtain the information. Your cooperation and assistance in this regard would be most helpful.

Very truly yours,

ANDERSON, MCPHARLIN & CONNERS LLP

By: 
Michael C. Phillips/APC

MCP:jkk
cc: Indemnity Insurance Company of North America
GMA Insurance Adjusters, Inc.
Helen Kong

EXHIBIT B

Declaration of Michael P. O'Bresly on
Opposition to Motion to Transfer Venue
Regents of the University v. Indemnity Insurance Company

Michael O'Bresly

From: Michael O'Bresly [mobresly@obreslylawfirm.com]
Sent: Monday, November 20, 2006 3:43 PM
To: 'mcp@amclaw.com'
Subject: UC Irvine Radial Road: Contact at UC Irvine for Documents

Michael,

Here is the contact with whom GMA may coordinate the picking up and copying of UC's documents. As mentioned on the phone, Lynn prefers the use of a reprographic company called Consolidated Reprographics, located in the Irvine area. I'd recommend that GMA arrange with Consolidated to pickup, copy and deliver originals, with direct billing to GMA. Consolidated should be able to provide a cost estimate before going forward with the job. There is apparently a large box of documents.

Name: Lynn Y. NAGAFUJI-JAVIER
Email(w): lynagafu@uci.edu
title: Manager of Contracts
department: Design & Construction Services
office_address: 5201 California Ave., Ste. 250
mailcode: 2450
Phone(w): (949) 824-7009
fax_number: (949) 824-8096

Sincerely,

Michael P. O'Bresly

Attorney at Law
1300 Clay Street 11th Flr.
P. O. Box 21303
Oakland, CA 94620
Tel: (510) 350-8332
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